

**REMARKS**

This application is in condition for allowance for the reasons stated below, and as evidenced by the Declaration Submitted Under 37 C.F.R. §1.132 provided in the Appendix.

As the attached Declaration and arguments are expected to require further consideration and/or search, a Request for Continued Examination is filed concurrently.

**Status of the Claims**

Claims 1-24 remain in this application.

**Claim Rejections-35 USC §103**

Claims 1-24 stand rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over DAHLSTROM et al. U.S. 6,319,526 (R1) in view of KHARRAZI U.S. 4,719,113(R2). This rejection is respectfully traversed for the reasons below.

The position of the Official Action was that:

*"[I]t would have been obvious to one of ordinary skill in the art, at the time the invention was made, to follow the teachings of R1 and mix in the yogurt at a lower temperature as taught by R2. One would do so to protect the live culture in the yogurt, to protect the flavor and prevent the curdling of the added yogurt at low pH and high temperature. Absent any evidence to contrary and based on the combined teachings of the cited references, there would be a reasonable expectation of success in making the processed cheese containing yogurt."*

However, one of ordinary skill in the art would not have combined R1 and R2 given their different purposes, and

their combination fails to suggest the claimed invention as explained below.

**I. The purposes of R1 and R2 differ.**

**The purpose of R1**

The purpose of R1 is to form a cheese with fibrous texture: a mozzarella type cheese.

One of the main objectives is to extend the "normal" shelf life of mozzarella from one month to at least two months up to six months.

Another objective is to improve the cooking/baking characteristics of the cheese, as the main intended use of the cheese is for pizza manufacture (Column 1, line 30 to column 2, line 50).

R1 does disclose adding fermented milk or yogurt, but R1 clearly does not desire any live flora. These dairy ingredients are subjected to heating between 57 and 67°C. (See column 4, in the second to last paragraph.)

Indeed, R1 specifically notes that adding the ingredients "to the mozzarella curd before it has been heated results in improved control of analytical and functional characteristics". (Emphasis Added) See, e.g., Column 3 lines 22-49.

As a result, the mozzarella or mozzarella-like cheese does not contain live flora.

**The purpose of R2**

The purpose of R2 is to form a food product which resembles cheese, but has a fat content below that of conventional cheese (Column 1, lines 5-10). Specifically, R2 forms a yogurt having a non-fibrous texture, which resembles cheese.

Although R2 discloses that the intention is to match the texture of cheese, this appears to be solely based on firmness and moisture content. See, e.g., column 1, lines 64-68 and column 3 lines 30-66. Indeed, R2 heats the starting material to 82°C. Such a temperature destroys a fibrous texture, as specified in the present application at page 9.

There is no mention of improvements in cooking, baking or shelf life.

**The proposed modification is contrary to R1.**

R1 requires at least the following characteristics: (1) an extended shelf life, (2) a fibrous texture, and (3) improved cooking/baking. R1 notes that by adding ingredients prior to heating one is able to improve "control of analytical and functional characteristics".

R2, which adds yogurt after a heating step, is limited to a non-fibrous texture, and R2 fails to suggest that an extend shelf-life or improved cooking/baking is achievable.

Thus, one would have expected that adding yogurt after heating, as suggested in the Official Action would have prevented the control of these desired characteristics of R1.

If proposed modification would render the prior art invention being modified unsatisfactory for its intended purpose, then there is no suggestion or motivation to make the proposed modification. *In re Gordon*, 733 F.2d 900, 221 USPQ 1125 (Fed. Cir. 1984)

Consequently, there would have been no motivation to combine these documents as suggested.

**II. The combination fails to suggest the claimed invention.**

The combination fails to suggest the claimed invention, as noted in the Declaration Under Rule 1.132 by the named inventor, Florence VIAUD, is provided in the Appendix.

As explained on page 3 of the Declaration in the Appendix, the claimed method and the R1 method differ in that:

i) the final dairy product obtained with the method of R1 would not contain any live flora due to the heating required between 57-67°C, whereas the final cheese product of the claimed method contains a rich flora and has the taste of a fresh fermented milk product; and

ii) the starting materials of both methods are different (grinding the curd vs pasta filata type cheese such as mozzarella), and the final dairy product obtained with the

R1 method is different of the final cheese product of the claimed method since the final dairy product of R1 (i.e. mozzarella or mozzarella-like cheese) is the starting material used in the claimed method (drawn-curd cheeses, i.e. pasta filata type cheese such as mozzarella, provolone, and cacciocavallo).

Thus, R1 is contrary to the claimed invention as a whole.

A prior art reference must be considered in its entirety, i.e., as a whole, including portions that would lead away from the claimed invention. *W.L. Gore & Associates, Inc. v. Garlock, Inc.*, 721 F.2d 1540, 220 USPQ 303 (Fed. Cir. 1983), cert. denied, 469 U.S. 851 (1984).

R2 as explained in pages 3 and 4 of the declaration produces a mozzarella yogurt having a non-fibrous texture, not a fibrous texture as in R1 and the claimed invention. Although R2 does included live flora, R2 cannot remedy the shortcomings of R1 for reference purposes.

Indeed, even if one were to combine R1 and R2, as noted on page 4 of the declaration, the resulting combination of R1 and R2 suggest:

- i) grinding the curd;
- ii) working the curd, i.e. heating between 57 and 67°C and mechanically kneading and stretching the curd to a

viscous molten state wherein the curd develops into fibrous mass;

iii) decreasing the temperature of the curd of step ii) to approximately 37°C; and

iv) mixing the cooled curd of step iii) with yogurt.

Thus, the resulting combination is different from the claimed method since the starting materials are different (grinding the curd vs. pasta filata type cheese such as mozzarella), which implies that the final product is also different.

Therefore, claims 1-24 are not rendered obvious by the proposed combination, and withdrawal of the rejection is respectfully requested.

#### **Conclusion**

In view of the foregoing remarks and cited evidence, this application is in condition for allowance at the time of the next Official Action. Allowance and passage to issue on that basis is respectfully requested.

Should there be any matters that need to be resolved in the present application, the Examiner is respectfully requested to contact the undersigned at the telephone number listed below.

The Commissioner is hereby authorized in this, concurrent, and future submissions, to charge any deficiency or credit any overpayment to Deposit Account No. 25-0120 for any additional fees required under 37 C.F.R. § 1.16 or under 37 C.F.R. § 1.17.

Respectfully submitted,

YOUNG & THOMPSON

/Robert A. Madsen/  
Robert A. Madsen, Reg. No. 58,543  
209 Madison Street, Suite 500  
Alexandria, VA 22314  
Telephone (703) 521-2297  
Telefax (703) 685-0573  
(703) 979-4709

RAM/fb

**APPENDIX:**

The Appendix includes the following item:

- Declaration under 37 CFR 1.132 by Florence VIAUD
- CV of Florence VIAUD